

## **SUNNYSIDE GOLD CORPORATION -- CONSENT DECREE OVERVIEW**

### **I. Background**

- A. Final reclamation plan submitted by SGC to and approved by MLRB includes installation by SGC of bulkhead at property line in American Tunnel (Cement Creek) and in Terry Tunnel portal.
  - 1. DMG approval rationale stated that Sunnyside Mine appeared to ideal for a hydraulic sealing scheme.
  - 2. Problem with perpetual treatment.
- B. MLRB approval stated that responsibility for enforcement of potential discharge permit compliance problems would rest with WQCD.
- C. SGC currently holds discharge permits and will continue to be responsible for those throughout life of CD.
- D. SGC files Complaint for Declaratory Relief against WQCD in State District Court requesting the Court to determine applicability of permit requirements of CWQCA.
  - 1. WQCD position: Any seeps and springs could be enforceable against SGC as the discharge of pollutants of state waters from a point source without a permit.
- E. Potential impacts of litigation.
  - 1. If WQCD successful.
  - 2. If SGC successful.

### **II. Basic premises.**

- A. SGC's plugging of its tunnels and emergence or increase of seeps and springs) may not cause water quality in the Animas River to be any worse than it is with current treatment of tunnel drainage pursuant to CDPS permits.
- B. Flows from tunnels must be eliminated or, in the case of the American Tunnel, permit accepted by another party.

### III. Implementation

- A. Focus on Animas River.
  - 1. Water of concern.
  - 2. Allows bubble concept.
- B. Plugging's effect on water quality: SGC's CDPS permits for its two draining mine adits impose the most stringent discharge limits that the WQCD can require, achieved by SGC's treatment plants. Although plugging the portals would initially stop that drainage, seeps and springs will emerge causing the water quality to be worse than as currently treated.
- C. SGC will complete mitigation projects in the Animas River basin which will compensate for the loading caused by plugging.
  - 1. SGC will complete "A" list.
    - a. WQCD believes that completion of "A" list will cause successful completion of CD.
    - b. If completion of "A" list does not result in successful completion of CD, SGC may choose to complete projects on "B" list, then other projects, or prematurely terminate agreement.
  - 2. Treatment of Cement Creek -- temporary water quality treatment cushion to offset potential additional pollutant loading, during implementation of mitigation projects.
- D. Determination if Agreement is Successful (in CD referred to as a Successful Permit Termination Assessment) -- All of following must be met:
  - 1. 5 years since date of valve closure at the American Tunnel property line plug.
  - 2. 2 years since notice of mine pool equilibrium.
  - 3. Valves and pipes in seals in the American and Terry Tunnels grouted.
  - 4. Hydrologic controls and seals eliminating flows from the lower American Tunnel portal completed, or CDPS permit for American Tunnel accepted by another party or parties.
  - 5. All projects on "A" list completed.

6. Treatment of Cement Creek has ceased Cement Creek must be treated during implementation of mitigation projects).
7. It is demonstrated in accordance with Appendix A (statistical analysis) that Reference Water Quality is being maintained without continued treatment of Cement Creek.

#### **IV. Termination of Consent Decree.**

##### **A. Successful Permit Termination Assessment.**

1. CDPS permits terminated.
2. No future CDPS point source permits will be required of SGC or its parent company for seeps or springs which may emerge or increase in the Upper Animas River or Cement Creek drainages following installation and closure of bulkhead seals in the American or Terry Tunnels.

##### **B. Premature Termination.**

1. Limited ability of both parties.
  - a. SGC: After completion of "A" list projects, if it determines that a successful permit termination assessment is not feasible.
  - b. By WQCD if SGC is not performing.
2. Parties return to litigation.
3. CDPS permits remain in effect.
4. SGC will treat any flow from the American Tunnel and the entire flow from Cement Creek up to a treatment capacity of 1800 gallons per minute in accordance with its CDPS permit for thirty months.

**V. Financial Surety.**

- A. Letter of credit in amount of \$5,000,000.
- B. WQCD may draw on if:
  - 1. SGC files for bankruptcy or becomes bankrupt; and
  - 2. SGC discontinues treatment of water necessary to maintain water quality.
- C. WQCD may use proceeds to protect the waters of the state by entering and operating the treatment facility at the American Tunnel portal and disposing treatment residues at SGC's existing tailings pond.

**VI. Miscellaneous.**

- A. WQCD will enter into MOA with DMG for DMG to inspect mitigation projects.